

1 AN ACT relating to crimes and punishments and making an appropriation therefor.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) A pilot program shall be established in no less than ten (10) counties selected by*
6 *the Chief Justice of the Supreme Court to participate in a behavioral health*
7 *conditional dismissal program. The pilot program shall begin October 1, 2022,*
8 *and shall last for four (4) years unless extended or limited by the General*
9 *Assembly.*

10 *(2) Each participating county shall have access to:*

11 *(a) Medication assisted treatment;*

12 *(b) Recovery services as defined under Section 2 of this Act; and*

13 *(c) Educational and vocational resources sufficient to provide the training and*
14 *assistance required under Section 9 of this Act.*

15 *(3) (a) Every behavioral health treatment program provider in the pilot program*
16 *shall collect and maintain data as provided in this subsection relating to*
17 *program participants under their care, designed to inform the outcomes and*
18 *effectiveness of the pilot program, to be submitted to the Administrative*
19 *Office of the Courts as provided under paragraphs (b) to (e) of this*
20 *subsection.*

21 *(b) A report shall be made for each program participant no later than fourteen*
22 *(14) days following the initiation of treatment. The data to be collected and*
23 *submitted in the report shall include the following information regarding*
24 *each participant:*

25 *1. Age, gender, and race or ethnicity;*

26 *2. Housing history;*

27 *3. Educational history;*

1 4. Employment history;

2 5. Past involvement in addiction recovery and treatment for a substance
3 use disorder;

4 6. Past treatment for a mental health disorder; and

5 7. Criminal history.

6 (c) A second report shall be made for each program participant identified in
7 paragraph (b) of this subsection no later than twenty-eight (28) days after
8 filing the initial report and shall provide the progression of the program
9 participant including but not limited to:

10 1. Continuation in the program;

11 2. The status and type of recommended treatment;

12 3. Employment or job training;

13 4. The status and type of educational training;

14 5. Housing status;

15 6. Any other information the program provider determines may assist in
16 evaluation of the pilot program; and

17 7. If the participant has been discharged from the program due to an
18 inability or unwillingness to meet the terms and conditions of the
19 treatment program, including the specific reason for the discharge.

20 (d) Subsequent reports shall be filed on a quarterly basis. The initial quarterly
21 report shall be submitted no later than January 15, 2023, with reports due
22 thereafter on January 15, April 15, July 15, and October 15 of each year of
23 the pilot program. The quarterly reports shall include for the reporting
24 period:

25 1. The information required under paragraph (c) of this subsection as it
26 relates to each program participant, including the length of time the
27 individual has been a program participant;

- 1 2. The number of clinical assessments performed by the program
- 2 provider;
- 3 3. The total number of individuals participating in the behavioral health
- 4 conditional dismissal program with that provider;
- 5 4. The number of individuals who remain in compliance with the terms
- 6 and conditions of the treatment program;
- 7 5. The number of individuals who have been discharged from the
- 8 program due to an inability or unwillingness to meet the terms and
- 9 conditions of the treatment program, including the specific reason for
- 10 the discharge;
- 11 6. For any individual discharged under subparagraph 5. of this
- 12 paragraph, the length of time the individual participated in the
- 13 program;
- 14 7. The number of individuals who have been discharged from the
- 15 program upon successful completion of the treatment program
- 16 requirements;
- 17 8. The number of individuals who have received medication-assisted
- 18 treatment and the result of that treatment;
- 19 9. The number of individuals who have completed a recommended job
- 20 skills or job training program; and
- 21 10. The number of individuals who have completed a recommended
- 22 educational component of the program.
- 23 (e) A final report shall be filed for each program participant no later than
- 24 thirty (30) days following discharge from the program and shall contain, at
- 25 a minimum, the following information:
- 26 1. If the discharge from the program was due to an inability or
- 27 unwillingness to meet the terms and conditions of the treatment

1 program the:

2 a. Specific reason for the discharge;

3 b. Length of time the individual participated in the program;

4 c. Goals met during the participation period;

5 d. Identified barriers to completion of the program, if known; and

6 e. Recommended adjustments to the behavioral health conditional
7 dismissal program that could provide a greater probability of
8 successful completion to similar participants; and

9 2. If the discharge from the program occurred upon successful
10 completion of the program requirements:

11 a. The length of time the individual participated in the program;

12 b. A summary of the specific programs completed and goals
13 attained by the participant;

14 c. What continued treatment, if any, is recommended; and

15 d. Recommended adjustments to the behavioral health conditional
16 dismissal program that could provide greater benefit to similar
17 participants.

18 (4) The attorneys for the Commonwealth participating in the pilot program shall
19 submit quarterly reports to the Administrative Office of the Courts. The initial
20 quarterly report shall be submitted no later than January 15, 2023, with reports
21 due thereafter on January 15, April 15, July 15, and October 15 of each year of
22 the pilot program. The quarterly reports shall include for the reporting period:

23 (a) The number of eligible defendants, including the defendant's race,
24 ethnicity, and gender, who were offered participation in the behavioral
25 health conditional dismissal program but declined to participate;

26 (b) The number of eligible defendants, including the defendant's race,
27 ethnicity, and gender, who sought to participate in the program but whose

1 participation was not agreed to by the attorney for the Commonwealth;

2 (c) The number of victims, if there is an identified victim, who did not
3 participate in the process; and

4 (d) The number of victims, if there is an identified victim, who did not agree to
5 the defendant's participation in the program.

6 (5) If the attorney for the Commonwealth did not agree to an eligible defendant's
7 participation in the behavioral health conditional dismissal program, he or she
8 shall include in each quarterly report to the Administrative Office of the Courts
9 the specific offenses charged for that defendant, and the substantial and
10 compelling reasons, based upon delineated facts specific to the defendant, why
11 the defendant was denied participation in the program.

12 (6) The Chief Justice of the Supreme Court shall submit an annual report to the
13 Legislative Research Commission, the chair of the Senate Standing Committee
14 on Judiciary, the chair of the House Standing Committee on Judiciary, and the
15 Governor by January 31 of each year that includes the information received from
16 the attorneys for the Commonwealth and the providers for the counties
17 participating in the behavioral health conditional dismissal program. The report
18 shall include the information reported under subsections (3) to (5) of this section
19 and shall also include:

20 (a) The number of defendants assessed who did not meet the eligibility
21 requirements for the program following the clinical assessment;

22 (b) The specific offenses charged for each defendant and the classification of
23 offenses charged;

24 (c) The percentage of defendants participating in the program who successfully
25 completed the program;

26 (d) The percentage of defendants discharged from the program for
27 noncompliance; and

1 (e) The percentage of defendants who are arrested, convicted, and incarcerated
2 within six (6) months, one (1) year, and two (2) years of successful
3 completion of the program.

4 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO
5 READ AS FOLLOWS:

6 As used in Sections 1 to 8 of this Act:

7 (1) "Behavioral health conditional dismissal program" means a program designed
8 to provide an eligible person who has a behavioral health disorder and who has
9 been charged with a qualifying offense an alternative to receive treatment and
10 recovery support services addressing the behavioral health disorder instead of
11 incarceration, resulting in dismissal of the charges upon successful completion;

12 (2) "Behavioral health disorder" means a mental health disorder or substance use
13 disorder, or both;

14 (3) "Behavioral health treatment program" means a plan or recovery program,
15 based upon a clinical assessment, that:

16 (a) Identifies and incorporates recovery services to meet the specific treatment
17 and recovery goals and the needs of the individual served;

18 (b) Addresses the social determinants of health to include housing,
19 transportation, access to medical care, and meaningful employment; and

20 (c) Considers a full continuum of care;

21 (4) "Clinical assessment" means an assessment that is performed by a qualified
22 mental health professional in accordance with the most recent American Society
23 of Addiction Medicine criteria for a substance use disorder, and the most recent
24 edition of the American Psychiatric Association's Diagnostic and Statistical
25 Manual of Mental Disorders for a mental health disorder;

26 (5) "Eligible applicant" or "eligible person" means an individual:

27 (a) Who has completed a clinical assessment and been referred to care; and

1 **(b) Who meets the requirements of Section 3 of this Act;**

2 **(6) "Mental health disorder" is a diagnostic term that covers many clinical**
3 **categories typically including behavioral or psychological symptoms, or both,**
4 **along with impairment of personal and social function, and specifically defined**
5 **and clinically interpreted through reference to criteria contained in the most**
6 **recent edition of the American Psychiatric Association's Diagnostic and**
7 **Statistical Manual of Mental Disorders;**

8 **(7) "Qualified mental health professional" means the same as in KRS 202A.011 and**
9 **shall include a licensed clinical alcohol and drug counselor under KRS Chapter**
10 **309;**

11 **(8) "Qualifying offense" means a misdemeanor or Class D felony that is not:**

12 **(a) An offense that would qualify the person as a violent offender under KRS**
13 **439.3401;**

14 **(b) A sex crime as defined by KRS 17.500;**

15 **(c) An offense under KRS 189A.010;**

16 **(d) An offense against a victim who has a protective order as defined in KRS**
17 **508.130 against the defendant at the time the offense is charged;**

18 **(e) An act of domestic violence and abuse as defined in KRS 403.720, or an act**
19 **of dating violence and abuse as defined in KRS 456.010; or**

20 **(f) An offense against a victim who has an interpersonal protective order**
21 **issued under KRS 456.060.**

22 **(9) "Recovery services" means rehabilitative treatment services that shall include but**
23 **not be limited to any or all of the following:**

24 **(a) Outpatient treatment;**

25 **(b) National Alliance of Recovery Residences or the Council on Accreditation**
26 **of Rehabilitation Facilities certified housing;**

27 **(c) Medication treatment;**

- 1 (d) Personal and family counseling;
2 (e) Substance abuse education and prevention classes or counseling;
3 (f) Vocational training;
4 (g) Literacy training;
5 (h) Community service;
6 (i) Inpatient or residential behavioral health treatment as needed to address:
7 1. Impaired capacity to use self-control, judgment, or discretion related
8 to behavior;
9 2. Severe dependence;
10 3. Special detoxification;
11 4. Relapse; or
12 5. Other treatments recommended by a qualified mental health
13 professional;
14 (j) Restorative practices designed to make the participant accountable to the
15 victim when there is an identified victim, and it is safe to do so; and
16 (k) Recovery housing assistance; and
17 (l) Recovery housing programs that have an established third party outcome
18 evaluation; and
19 (10) "Substance use disorder" has the same meaning as in KRS 222.005.

20 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO
21 READ AS FOLLOWS:

- 22 (1) In addition to the pretrial diversion program established under KRS 533.250 to
23 533.260, and the deferred prosecution program established under KRS
24 218A.14151, a behavioral health conditional dismissal program shall be operated
25 in each county participating in the pilot program established under Section 1 of
26 this Act. The behavioral health conditional dismissal program shall:
27 (a) Provide eligible persons, on an equal basis, an alternative to ordinary

1 prosecution for qualifying offenses arising from a behavioral health
2 disorder by receiving early recovery services and treatment reasonably
3 expected to deter future criminal behavior; and

4 (b) Provide an expedited alternative to prosecution for eligible persons who
5 may be harmed by the imposition of criminal sanctions in the absence of the
6 alternative when the alternative is reasonably expected to serve as a
7 sufficient deterrent to criminal conduct.

8 (2) The program may be utilized by any person:

9 (a) Who is a resident of the Commonwealth and who is at least eighteen (18)
10 years of age;

11 (b) Whose clinical assessment indicates the presence of a behavioral health
12 disorder;

13 (c) Charged with a qualifying offense;

14 (d) Who does not have a previous conviction for a Class A, B, or C felony, or a
15 Class D felony or misdemeanor that is not a qualifying offense; and

16 (e) Who has been assessed by pre-trial services as a low-risk, low-level
17 offender, or has been otherwise determined by the attorney for the
18 Commonwealth or the attorney for the defendant as a viable participant in
19 the program.

20 (3) Other factors that may be considered for admission into the behavioral health
21 conditional dismissal program include but are not limited to:

22 (a) The likelihood that the applicant's offense is related to a behavioral health
23 disorder that would be conducive to change through his or her participation
24 in a behavioral health treatment program;

25 (b) The availability of behavioral health treatment programs in the defendant's
26 county of residence if different from the county of arrest;

27 (c) The history of any physical violence toward others as documented through

1 judicial or law enforcement records;

2 (d) Any involvement of the applicant with organized crime under KRS 506.120;

3 and

4 (e) Whether or not the applicant's participation in a behavioral health
5 treatment program would adversely affect the prosecution of codefendants.

6 (4) Eligible defendants in pretrial confinement shall be given preference for
7 participation in the behavioral health conditional dismissal program.

8 (5) Eligible defendants who have charges pending but are not in custody shall be
9 assessed for participation in the behavioral health conditional dismissal program
10 as provided under subsection (1)(d) of Section 4 of this Act.

11 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO
12 READ AS FOLLOWS:

13 (1) (a) Following arrest, and within seventy-two (72) hours after being booked into
14 a jail or detention facility, any person who has been charged with a
15 qualifying offense shall undergo a clinical assessment to determine if he or
16 she may have a behavioral health disorder;

17 (b) The Cabinet for Health and Family Services shall provide a list of approved
18 assessors in accordance with Section 8 of this Act for each county
19 participating in the pilot program;

20 (c) The jailer or his or her designee shall contact a qualified mental health
21 professional from the list of approved assessors for the county provided
22 under paragraph (b) of this subsection, and shall advise the qualified
23 mental health professional that a clinical assessment is needed;

24 (d) If a person has been charged with a qualifying offense and has been
25 released prior to receiving a clinical assessment, he or she individually, or
26 through his or her counsel, if any, may request a clinical assessment by a
27 qualified mental health professional at any time during the proceedings

1 from the list of approved assessors provided under paragraph (b) of this
2 subsection;

3 (e) Notwithstanding any other provision to the contrary, the clinical assessment
4 may be conducted through telehealth or in person, whether the person
5 charged is in the custody of the jail or has been released;

6 (f) If the qualified mental health professional determines that the person being
7 assessed is physically or psychologically impaired to the extent that he or
8 she cannot provide sufficient information or responses to conduct or
9 complete the assessment, the assessment may be delayed but only for the
10 time required for the person to adequately respond;

11 (g) No statement or other disclosure made by the person charged in the course
12 of the clinical assessment shall be admissible in a criminal trial unless the
13 trial is for a crime committed during the assessment; however, nothing in
14 this subsection shall be interpreted to prevent any reporting required by law;

15 (h) Any referral for treatment shall be based upon the clinical assessment and a
16 finding by the qualified mental health professional that treatment is
17 medically necessary;

18 (i) The treatment referral shall be forwarded to the attorney for the
19 Commonwealth and the attorney for the person charged, if any, within
20 forty-eight (48) hours of the assessment;

21 (j) The failure of the assessor to forward the referral to the attorney for the
22 Commonwealth or the attorney for the person charged, if any, within forty-
23 eight (48) hours shall not result in automatic release of the person charged;
24 and

25 (k) Nothing in this subsection shall be interpreted to create a duty of the jailer
26 to pay for any costs associated with the clinical assessment.

27 (2) At any time following arrest the Commonwealth's attorney if the underlying

1 charge includes a felony, or the county attorney if the underlying charge only
2 includes a misdemeanor, and the person charged may agree to the individual's
3 participation in the behavioral health conditional dismissal program.

4 (3) When an individual is being considered for the behavioral health conditional
5 dismissal program, the attorney for the Commonwealth shall:

6 (a) Have a criminal record check made to ascertain if the person is eligible for
7 the program;

8 (b) Consult with the victim of the crime, if there is an identified victim;

9 (c) Explain the behavioral health conditional dismissal program to the victim,
10 including potential terms and conditions, and any other matter the attorney
11 for the Commonwealth deems to be appropriate, including the right of the
12 victim to submit a written statement that shall be included in the record
13 placed under seal under Section 6 of this Act; and

14 (d) Conduct any other investigation that the attorney for the Commonwealth
15 determines may be necessary to assist him or her in agreeing to the referral
16 for treatment by the qualified mental health professional and the
17 defendant's participation in the behavioral health conditional dismissal
18 program.

19 (4) If the defendant agrees to the terms of the individualized treatment plan, which
20 shall include restitution, and the attorney for the Commonwealth agrees to the
21 defendant's participation in the program, the defendant and the attorney for the
22 Commonwealth shall sign an agreement specifying the terms and conditions. If
23 the defendant is represented by counsel, defense counsel shall also sign the
24 agreement.

25 (5) The length of the program shall be determined by the qualified mental health
26 professional in collaboration with the provider and the type of program based
27 upon the assessment and shall not:

- 1 (a) Be less than one (1) year in duration unless discharged earlier by the
2 provider upon satisfactory completion of the recommended treatment plan
3 with agreement of the attorney for the Commonwealth after consultation
4 with the victim, and with agreement of the defendant; or
- 5 (b) Exceed a period of time longer than the defendant's maximum potential
6 period of incarceration if found guilty of the offenses charged unless the
7 defendant agrees in writing to an extension of the treatment period.
- 8 (6) A defendant participating in the behavioral health conditional dismissal program
9 shall not be required to:
- 10 (a) Plead guilty or enter an Alford plea as a condition for participation in the
11 program; or
- 12 (b) Make any statement or stipulate to any statement relating to evidence in the
13 underlying case as a condition for participation in the program.
- 14 (7) Execution of the agreement by the defendant shall toll all further proceedings
15 against the defendant relating to the agreement, except the matter may be set for
16 a status review at the discretion of the court.
- 17 (8) Upon execution of the agreement as provided in subsection (4) of this section, the
18 defendant shall present himself or herself for treatment no later than three (3)
19 days after the agreement is signed. The attorney for the Commonwealth shall:
- 20 (a) Notify the treatment provider of the agreement and the effective date; and
21 (b) Provide the victim, if there is an identified victim, with notice that an
22 agreement has been reached for the defendant's participation in the
23 behavioral health conditional dismissal program, and the terms of the
24 agreement that are applicable to the victim.
- 25 (9) If the defendant remains in custody at the time of the agreement, the court shall
26 order release of the defendant which shall not include a requirement of cash bail.
- 27 (10) The charges against the defendant shall proceed with ordinary prosecution upon

1 dismissal of the defendant from the treatment program by the provider for
2 noncompliance.

3 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) Upon initiation of treatment, the designated behavioral health treatment provider
6 shall assign a case manager who shall notify the Office of Adult Education
7 within the Department of Workforce Investment of the Education and Workforce
8 Development Cabinet of the individual's participation in a behavioral health
9 conditional dismissal program.

10 (2) The case manager shall work in collaboration with the individual referred for
11 treatment and the treatment team and provider to:

12 (a) Obtain all releases from the individual served that may be required to
13 confirm compliance with the program requirements;

14 (b) Coordinate all services and testing required under the program, including
15 transportation if needed and available;

16 (c) Receive and maintain copies of all necessary documentation to ensure
17 compliance with the program requirements, including but not limited to:

18 1. Treatment records;

19 2. Drug tests;

20 3. Educational assessments and advancements, if applicable;

21 4. Employment status and employment training;

22 5. Community service, if applicable; and

23 6. Housing status;

24 (d) Meet or conference with providers of any program requirements on a
25 regular basis to address the participant's progress, including restitution,
26 and any required adjustment that may be needed to the participant's
27 program;

1 (e) Provide periodic progress reports to the attorney for the Commonwealth and
2 the attorney for the participant according to the following schedule:

3 1. An initial report within fourteen (14) days of the initiation of
4 treatment;

5 2. A follow-up report within twenty-eight (28) days after submission of
6 the initial fourteen (14) day report;

7 3. Subsequent reports on a quarterly basis throughout the course of
8 treatment beginning January 15, 2023, with reports due thereafter on
9 January 15, April 15, July 15, and October 15 of each year of the
10 participation in the pilot program; and

11 4. A final report within thirty (30) days of the successful completion of
12 the program;

13 (f) Request modifications that may be needed to the treatment program to the
14 attorney for the Commonwealth, and the attorney for the participant;

15 (g) Review the individual's progress and recommend continued participation in
16 the program or dismissal from the program due to an inability or
17 unwillingness to meet the terms and conditions of the program;

18 (h) Immediately report dismissal from the treatment program based upon lack
19 of compliance with the terms and conditions of the program to the attorney
20 for the Commonwealth, the court, and the attorney for the participant; and

21 (i) Advise the attorney for the Commonwealth, the court, the attorney for the
22 participant, and the victim, if there is an identified victim, of the
23 participant's successful completion of the program requirements.

24 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO
25 READ AS FOLLOWS:

26 (1) Upon successful completion of the behavioral health conditional dismissal
27 program;

- 1 (a) The court shall dismiss the charged offense or offenses with prejudice and
2 discharge the defendant;
- 3 (b) All records relating to the case, including but not limited to arrest records
4 and records relating to the charges, shall be sealed, except as provided in
5 KRS 27A.099;
- 6 (c) The offense shall be accessible for review for the sole purpose of
7 determining the defendant's eligibility for deferred prosecution under KRS
8 218A.1415; and
- 9 (d) The defendant shall not be required to disclose the arrest or other
10 information relating to the charges or participation in the program on an
11 application for employment, credit, or other type of application unless
12 required to do so by state or federal law.
- 13 (2) If a defendant who is participating in the behavioral health conditional dismissal
14 program is convicted of or enters a plea of guilty to any felony offense that was
15 charged under any law of the United States, this state, or any other state while
16 participating in the program, the defendant shall be discharged from the
17 behavioral health conditional dismissal program for failure to comply with the
18 terms and conditions.
- 19 (3) If the defendant is discharged from the behavioral health conditional dismissal
20 program by the treatment provider under Section 5 of this Act, all statements or
21 other disclosures made by the defendant to any provider while participating in the
22 program shall be protected by all applicable privacy laws and professional
23 standards regarding confidentiality and shall not be admissible in a criminal trial
24 relating to the offenses covered by the agreement executed under Section 4 of this
25 Act.
- 26 (4) The attorney for the Commonwealth shall notify the victim, if there is an
27 identified victim, of the defendant's dismissal from the program for

1 noncompliance or discharge from the program following successful completion
2 of the program.

3 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) In establishing a specific behavioral health disorder treatment plan, the program
6 provider formulating the plan shall consider the following:

7 (a) The existence of programs and resources within the community;

8 (b) Available treatment providers;

9 (c) Available recovery housing;

10 (d) Accessible public and private agencies;

11 (e) The benefit of keeping the participant in his or her community or relocation
12 for purposes of treatment, housing, and other supportive services;

13 (f) The safety of the victim of the offense, if there is an identified victim; and

14 (g) The specific and personalized needs of the participant, including the choice
15 of the participant.

16 (2) A program shall be designed to provide the participant with the skills, training,
17 and resources needed to maintain recovery and prevent the person from engaging
18 in criminal activity arising from a behavioral health disorder upon release from
19 the program.

20 (3) A behavioral health treatment program under Sections 1 to 8 of this Act shall be
21 evidence-based, and may be a behavioral treatment plan, or a medically assisted
22 treatment plan, or both, with recovery services or a Substance Abuse and Mental
23 Health Services Administration evidence-based recovery housing program. The
24 program shall provide at a minimum access, as needed, to:

25 (a) Inpatient detoxification and treatment, that may include a faith-based
26 residential treatment program;

27 (b) Outpatient treatment;

1 (c) Drug testing;

2 (d) Addiction counseling;

3 (e) Cognitive and behavioral therapies;

4 (f) Medication assisted treatment including:

5 1. At least one (1) federal Food and Drug Administration approved
6 agonist medication for the treatment of opioid or alcohol dependence;

7 2. Partial agonist medication;

8 3. Antagonist medication; and

9 4. Any other approved medication for the mitigation of opioid
10 withdrawal symptoms;

11 (g) Educational services;

12 (h) Vocational services;

13 (i) Housing assistance;

14 (j) Peer support services; and

15 (k) Community support services, that may include faith-based services.

16 (4) Except for recovery housing providers, all treatment providers shall:

17 (a) Meet the licensure requirements and standards established by the Cabinet
18 for Health and Family Services under KRS Chapter 222;

19 (b) Qualify as a Medicaid approved provider; and

20 (c) Be accredited by at least one (1) of the following:

21 1. American Society of Addiction Medicine;

22 2. Joint Commission on the Accreditation of Healthcare Organizations;

23 or

24 3. Commission on Accreditation of Rehabilitation Facilities.

25 (5) All recovery housing service providers shall:

26 (a) Qualify to provide recovery housing services by the Department of
27 Corrections;

1 (b) Provide evidence-based services;

2 (c) Provide a record of outcomes;

3 (d) Provide peer support services; and

4 (e) Address the social determinants of health.

5 (6) (a) The Department for Medicaid Services, in conjunction with the program
6 provider, shall assist any program participant who qualifies for Medicaid
7 services to obtain or access Medicaid services for his or her behavioral
8 health disorder treatment or recovery program;

9 (b) The Department for Medicaid Services and its contractors shall provide an
10 individual participating in the behavioral health conditional dismissal
11 program with the substance use disorder benefit as provided under KRS
12 205.6311; and

13 (c) A Medicaid managed care organization shall treat any referral for
14 treatment under Sections 1 to 8 of this Act as an "expedited authorization
15 request" as provided under KRS 205.534(2)(a)2.b.

16 (7) Recovery housing services provided under this pilot program shall be paid
17 utilizing a value-based payment system developed and established by the medical
18 managed care organizations in conjunction with the Department for Medicaid
19 Services and recovery housing providers. The value-based payment system shall
20 be established no later than October 1, 2022 and shall include the following for
21 recovery housing programs:

22 (a) The development of a qualified recovery housing provider network; and

23 (b) Establishment and implementation of a value-based payment system that
24 shall include the regular collection of outcomes data within existing
25 Medicaid reimbursement regulations.

26 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 355 IS CREATED TO
27 READ AS FOLLOWS:

1 (1) The Cabinet for Health and Family Services shall establish and maintain a list of
2 approved assessors for each county participating in the pilot program established
3 under Section 1 of this Act to perform clinical assessments; and

4 (2) No assessor shall be approved unless he or she is a:

5 (a) Qualified mental health professional as defined under Section 2 of this Act;
6 and

7 (b) Medicaid approved provider or employed by a Medicaid approved provider.

8 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO
9 READ AS FOLLOWS:

10 (1) (a) The Office of Adult Education within the Department of Workforce
11 Investment of the Education and Workforce Development Cabinet in
12 conjunction with a community rehabilitation provider shall conduct an in-
13 person initial screening of any individual participating in a behavioral
14 health conditional dismissal program within thirty (30) days of a participant
15 beginning the program under Section 4 of this Act.

16 (b) Nothing in this section shall prohibit any department, office, or division of
17 the Education and Workforce Development Cabinet from entering into an
18 agreement with a third party in each county participating in the pilot
19 program to provide the services required under this section.

20 (2) The initial screening shall include:

21 (a) Educational history including highest school grade completed, and when;

22 (b) Employment history including types and lengths of employments;

23 (c) Military history, if any;

24 (d) The participant's physical, mental, and emotional abilities and limitations;

25 (e) Aptitude, skill level, and interest testing;

26 (f) An assessment of language skills; and

27 (g) A determination of whether further assessment is needed to develop the

1 vocational component of the recovery treatment program. If further
2 assessment is required, it shall be completed within the first ninety (90) days
3 following entry into the recovery treatment program unless additional time
4 is needed to provide for physical recovery from the effects of a severe
5 behavioral health disorder.

6 (3) Within ten (10) days of completion of the vocational assessment, the Office of
7 Adult Education, in consultation with the behavioral health conditional dismissal
8 program provider, shall establish an individualized plan designed to attain a
9 specific employment outcome to include:

10 (a) Specific educational goals with identification of institutions from which the
11 participant will receive educational credits or training;

12 (b) Specific job-skills training, and the facility or institution from which the
13 participant will receive the job skills training, to include:

14 1. A holistic education curriculum that includes but is not limited to
15 problem solving, communication skills, and interpersonal skills; and

16 2. Sector specific employers as designated by the Kentucky Workforce
17 Innovation Board;

18 (c) The required number of hours per week the participant will be engaged in
19 educational or vocational training, including anticipated study time or
20 assigned projects completion time outside of the classroom or training
21 facility;

22 (d) The specific services that will be provided through the Department of
23 Workforce Investment to achieve the employment outcome, overcome or
24 minimize any identified obstacles to employment, and the frequency with
25 which those services will be provided, including but not limited to access to
26 services during non-traditional business hours and support;

27 (e) The beginning and projected completion date of each service;

- 1 (f) If supported employment training or services are to be provided outside of
2 the Education and Workforce Development Cabinet, the identification of
3 the provider of the extended services and the reporting and accountability
4 requirements established with the program provider;
5 (g) The criteria established for evaluating progress and success;
6 (h) The attendance and reporting requirements established for the participant
7 and for the institution or facility providing the service, including to whom
8 and with what frequency reports are to be made;
9 (i) The date the employment plan is estimated to be completed;
10 (j) The job-placement assistance plan that will be provided to the participant by
11 the department;
12 (k) The need for ongoing or future training following completion of the
13 employment plan and the availability of that training to the participant; and
14 (l) The continuum of care to be provided by a community rehabilitation
15 provider.
16 (4) The Department of Workforce Investment, in consultation with the Kentucky
17 Higher Education Assistance Authority, shall provide the participant with
18 assistance in securing all scholarships, grants, or other available financial
19 assistance to ensure access to the educational or training requirements needed to
20 achieve the specific employment outcome.
21 (5) The Department of Workforce Investment may establish an electronic registry to
22 be used by participants in the behavioral conditional dismissal program,
23 treatment plan providers, and prospective employers to assist in matching
24 program participants with employment opportunities.

25 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO
26 READ AS FOLLOWS:

- 27 (1) The Behavioral Health Conditional Dismissal Program Implementation Council

1 is created for the purpose of assisting with the implementation of the behavioral
2 health conditional dismissal pilot program created under Section 1 of this Act.

3 (2) The membership of the council shall include the following:

4 (a) The executive director of the Office of Drug Control Policy, or his or her
5 designee, who shall serve as chair of the council;

6 (b) The director of the Administrative Office of the Courts, or his or her
7 designee;

8 (c) The commissioner of the Department for Behavioral Health, Developmental
9 and Intellectual Disabilities, or his or her designee;

10 (d) The commissioner of the Kentucky Department for Medicaid Services, or
11 his or her designee;

12 (e) The public advocate, or his or her designee;

13 (f) A member of the Kentucky Commonwealth's Attorneys' Association, elected
14 by its membership;

15 (g) A member of the Kentucky County Attorneys Association;

16 (h) One (1) Circuit Judge, elected by the Circuit Judges Association of
17 Kentucky;

18 (i) One (1) District Judge, elected by the District Judges Association of
19 Kentucky;

20 (j) The executive director of the Kentucky Jailers Association, or his or her
21 designee; and

22 (k) Two (2) individuals selected by the Kentucky Association of Regional
23 Programs, one (1) of whom shall be in recovery from a substance use
24 disorder and one (1) of whom is being treated or has been treated for a
25 mental health disorder as defined in Section 2 of this Act.

26 (3) The council shall meet at least quarterly. Meetings shall be held at the call of the
27 chair, or upon the written request of two (2) members to the chair.

1 (4) The council shall:

2 (a) Oversee the implementation of the behavioral health conditional dismissal
3 program pilot project;

4 (b) Review the data collected by the Administrative Office of the Courts and
5 report to the Interim Joint Committee on Judiciary and the Governor by
6 October 1 of each year of the pilot project regarding:

7 1. Recommendations for any additional performance measures needed to
8 promote the success of the program;

9 2. Whether any action is necessary, including funding or legislation;

10 3. Recommendations for resolving any matters that reduce the
11 effectiveness of the program; and

12 4. Any additional information the council deems appropriate.

13 (5) Members shall not receive any additional compensation for their service on the
14 council but shall be reimbursed for all necessary expenses.

15 (6) The council shall be attached to the Justice and Public Safety Cabinet for
16 administrative purposes.

17 (7) The council shall terminate September 30, 2027, unless extended by the General
18 Assembly.

19 ➔Section 11. KRS 197.020 is amended to read as follows:

20 (1) The Department of Corrections shall:

21 (a) Promulgate administrative regulations for the government and discipline of
22 the penitentiary, for the government and official conduct of all officials
23 connected with the penitentiary, and for the government of the prisoners in
24 their deportment and conduct;

25 (b) Promulgate administrative regulations for the character of food and diet of the
26 prisoners; the preservation of the health of the prisoners; the daily cleansing of
27 the penitentiary; the cleanliness of the persons of the prisoners; the general

- 1 sanitary government of the penitentiary and prisoners; the character of the
2 labor; the quantity of food and clothing; and the length of time during which
3 the prisoners shall be employed daily;
- 4 (c) Promulgate administrative regulations, as the department deems necessary, for
5 the disposition of abandoned, lost, or confiscated property of prisoners;
- 6 (d) Promulgate administrative regulations for the administration of a validated
7 risk and needs assessment to assess the criminal risk factors and correctional
8 needs of all inmates upon commitment to the department;
- 9 (e) Promulgate administrative regulations to:
- 10 1. Create a certification process for county jails that may house female
11 state inmates. The administrative regulations shall include a requirement
12 of a physical barrier between male and female inmates; and
- 13 2. *Require telehealth services in county jails; and*
- 14 (f) Cause the administrative regulations promulgated by the department, together
15 with the law allowing commutation of time to prisoners for good conduct, to
16 be printed and posted in conspicuous places in the cell houses and workshops.
- 17 (2) The department may impose a reasonable fee for the use of medical facilities by a
18 prisoner who has the ability to pay for the medical and dental care. These funds may
19 be deducted from the prisoner's inmate account. A prisoner shall not be denied
20 medical or dental treatment because he or she has insufficient funds in his or her
21 inmate account.
- 22 (3) The department may promulgate administrative regulations in accordance with KRS
23 Chapter 13A to implement a program that provides for reimbursement of telehealth
24 consultations.
- 25 (4) Fees for the use of medical facilities by a state prisoner who is confined in a jail
26 pursuant to KRS 532.100 or other statute shall be governed by KRS 441.045.